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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/622,945

07/18/2003

Douglas Hansen

00-1824

4450

40158

7590

06/23/2005

LEONARD & PROEHL, PROF. L.L.C.
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SUITE 250
SIOUX FALLS, SD 57105

EXAMINER

CANFIELD, ROBERT

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,945

Applicant(s)

HANSEN ET AL.

Examiner

Robert J. Canfield

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. This Office action is in response to the amendment filed 04/15/05. Claims 1, 2 and 5-9 remain pending. Claims 3 and 4 have been canceled.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0010371A1 to Langley in view of U.S. Patent 4,716,918 to Hayashida et al.

Langley provides a shelter adapted to rest on seat 32 having front and top wall 16, opposing side walls 24 and rear walls 23, ventilation holes (page 3) and transparent panels/windows 28.

Langley fails to provide that each of the side walls has a plurality of ventilation holes positioned proximate the top of the housing.

Hayashida teaches that it was known at the time of the invention to provide ventilation holes 34 on a side wall proximate the top of a shelter.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the side walls of Langley could have been provided with ventilation holes proximate the top thereof. It would have been obvious because Langley suggests a number of vents may be provided in the wall panels (plural) and Hayashida teaches it desirable to provide ventilation holes within a shelter adjacent the top thereof. It is also a well recognized fact that warm air rises and

that it would be desirable to locate any ventilation holes near the top to allow warm air to escape the enclosure.

4. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0010371A1 to Langley in view of U.S. Patent 6,334,278 to Arnold.

Langley provides a shelter adapted to rest on seat 32 having front and top wall 16, opposing side walls 24 and rear walls 23, ventilation holes (page 3) and transparent panels/windows 28.

Langley fails to provide that each of the side walls has a plurality of ventilation holes positioned proximate the top of the housing.

Arnold teaches that it was known at the time of the invention to provide ventilation holes 20 on opposite side walls proximate the top of a shelter for protecting users from adverse weather.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the side walls of Langley could have been provided with ventilation holes proximate the top thereof. It would have been obvious because Langley suggests a number of vents may be provided in the wall panels (plural) and Arnold teaches it desirable to provide ventilation holes within a shelter adjacent the top thereof. It is also a well recognized fact that warm air rises and that it would be desirable to locate any ventilation holes near the top to allow warm air to escape the enclosure.

5. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,052,251 to De Jean Jr. in view of U.S. Patent 4,716,918 to Hayashida et al.

De Jean provides a shelter comprised of a housing having front/top/back and opposing side walls which is adapted to slip over a user and rest on a seat (figure 2). The walls are transparent.

De Jean fails to provide ventilation holes on each of the side walls adjacent the top thereof.

Hayashida teaches that it was known at the time of the invention to provide ventilation holes 34 on a side wall proximate the top of a shelter. It would have been obvious at the time of the invention to one having ordinary skill in the art that the opposing side walls of De Jean could have been provided with ventilation holes proximate the top thereof. It would have been obvious because it has been suggested in the art by Hayashida to be desirable to provide ventilation within a shelter. It is also a well recognized fact that warm air rises and that it would be desirable to locate any ventilation holes near the top to allow warm air to escape the enclosure. Providing ventilation on opposite wall is also well known to allow for cross ventilation.

6. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,052,251 to De Jean Jr. in view of U.S. Patent 6,334,278 to Arnold.

De Jean provides a shelter comprised of a housing having front/top/back and opposing side walls which is adapted to slip over a user and rest on a seat (figure 2). The walls are transparent.

De Jean fails to provide ventilation holes on each of the side walls adjacent the top thereof.

Arnold teaches that it was known at the time of the invention to provide ventilation holes 20 on opposite side walls proximate the top of a shelter for protecting users from adverse weather. It would have been obvious at the time of the invention to one having ordinary skill in the art that the side walls of De Jean could have been provided with ventilation holes proximate the top thereof. It would have been obvious because it has been suggested in the art by Arnold to be desirable to provide ventilation within a shelter. It is also a well recognized fact that warm air rises and that it would be desirable to locate any ventilation holes near the top to allow warm air to escape the enclosure. Providing ventilation on opposite wall is also well known to allow for cross ventilation as shown in Arnold.

7. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,052,251 to De Jean Jr. as modified by U.S. Patent 4,716,918 to Hayashida et al. above further in view of U.S. Patent Re. 29,264 to Woodward.

De Jean as modified above provides a shelter comprised of a housing having front/top/back and opposing side walls which is adapted to slip over a user and rest on a seat (figure 2). The walls are transparent. Each of the side walls are modified to be provided with ventilation holes proximate the top thereof.

De Jean fails to provide a window panel coupling as claimed.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the viewing opening shown in figure 10 of De Jean could have been provided with a window panel coupled to an upper edge thereof which could be fastened at its lower edge with fastener tabs as taught by Woodward. It would have been obvious so that the viewing opening could be closed and thus shield the user from the elements.

8. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,052,251 to De Jean Jr. as modified by U.S. Patent 6,334,278 to Arnold above further in view of U.S. Patent Re. 29,264 to Woodward.

De Jean as modified above provides a shelter comprised of a housing having front/top/back and opposing side walls which is adapted to slip over a user and rest on a seat (figure 2). The walls are transparent. Each of the side walls are modified to be provided with ventilation holes proximate the top thereof.

De Jean fails to provide a window panel coupling as claimed.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the viewing opening shown in figure 10 of De Jean could have

been provided with a window panel coupled to an upper edge thereof which could be fastened at its lower edge with fastener tabs as taught by Woodward. It would have been obvious so that the viewing opening could be closed and thus shield the user from the elements.

9. Claims 1, 2, 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3, 491,781 to Reese in view of U.S. Patent 4,716,918 to Hayashida.

Reese provides a shelter comprised of a housing having front/top/back and side walls which is adapted to slip over a user and rest on a seat as shown in figure 2. The front wall is provided with plural windows 44. Walls 38 are taught as being transparent.

Reese fails to provide that each of the side walls has a plurality of ventilation holes positioned proximate the top of the housing.

Hayashida teaches that it was known at the time of the invention to provide ventilation holes 34 proximate the top of a shelter.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the side walls of Reese could have been provided with ventilation holes proximate the top thereof. It would have been obvious because Hayashida teaches it desirable to provide ventilation holes within a shelter adjacent the top thereof. It is also a well recognized fact that warm air rises and that it would be desirable to locate any ventilation holes near the top to allow

warm air to escape the enclosure. Providing vent holes on opposite walls is well known to create cross ventilation.

10. Claims 1, 2, 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3, 491,781 to Reese in view of U.S. Patent 6,334,278 to Arnold.

Reese provides a shelter comprised of a housing having front/top/back and side walls which is adapted to slip over a user and rest on a seat as shown in figure 2. The front wall is provided with plural windows 44. Walls 38 are taught as being transparent.

Reese fails to provide that each of the side walls has a plurality of ventilation holes positioned proximate the top of the housing.

Arnold teaches that it was known at the time of the invention to provide ventilation holes 20 proximate the top of a shelter for protecting users from adverse weather.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the side walls of Reese could have been provided with ventilation holes proximate the top thereof. It would have been obvious because Arnold teaches it desirable to provide ventilation holes on opposite side walls of a shelter adjacent the top thereof. It is also a well recognized fact that warm air rises and that it would be desirable to locate any ventilation holes near the top to allow warm air to escape the enclosure.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3, 491,781 to Reese in view of U.S. Patent 4,716,918 to Hayashida as modified above further in view of U.S. Patent Re 29, 264 to Woodward.

Reese as modified by Hayashida above provides each of the elements of the claim except a window panel coupled to the viewing apertures.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the viewing openings 44 of Reese could have been provided with a window panel coupled to an upper edge thereof which could be fastened at its lower edge with fastener tabs as taught by Woodward. It would have been obvious so that the viewing opening could be closed and thus shield the user from the elements.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3, 491,781 to Reese in view of U.S. Patent 6,334,278 to Arnold as modified above further in view of U.S. Patent Re 29, 264 to Woodward.

Reese as modified by Arnold above provides each of the elements of the claim except a window panel coupled to the viewing apertures.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the viewing openings 44 of Reese could have been provided with a window panel coupled to an upper edge thereof which could be fastened at its lower edge with fastener tabs as taught by Woodward. It would have been

obvious so that the viewing opening could be closed and thus shield the user from the elements.

13. Applicant's arguments filed 04/15/05 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the secondary references themselves teach the desirability of the ventilations holes adjacent the top of a shelter.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that there is no motivation to modify the base references to provide plural ventilation openings in each of the side walls adjacent the top thereof. This is not found persuasive because the examiner has used secondary references to

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teach that the provision of plural ventilation openings in side walls of enclosures adjacent tops thereof is known in the protective enclosure arts. The motivation is the teaching within the secondary references to provide the openings to provide ventilation within the enclosures.

The argument that Langely fails to provide each of the side walls having a plurality of ventilation holes is not persuasive as paragraph 34 of the specification recite that the ventilation hole as provided in the panels (plural). Hayshida is used as a secondary teaching reference for the proximity to the top.

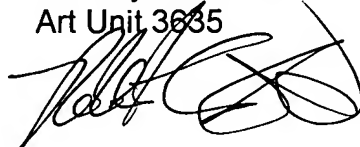
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J Canfield whose telephone number is 703-308-2482. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
Art Unit 3635

A handwritten signature in black ink, appearing to read 'R. Canfield', is written over the printed name and title.

06/19/05